



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 23, 1998

Ms. Elaine S. Hengen
Assistant City Attorney
The City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901-1196

OR98-2820

Dear Ms. Hengen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 119807.

The City of El Paso Police Department (the "department") received a written request from the State Board of Educator Certification (the "Board") for "copies of all offense, incident, and investigation reports, including witness statements, and confessions" related to a named individual and alleged acts of indecency with a child. You contend that the responsive information is an investigation file excepted from public disclosure in its entirety by section 552.101 of the Government Code in conjunction with 261.201 of the Family Code. You further contend that certain school attendance records contained in the responsive document are excepted from public disclosure by section 552.101 of the Government Code in conjunction with the "Federal Privacy Act." You have provided a representative sample of the requested information.¹ We have considered the exception raised and the subject information.

The Board couches its request as a "statutorily authorized interagency transfer of information . . . not made under the Texas Public Information Act." However, our office has opined that "so long as the request reasonably can be identified as a request for public

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

records" it will invoke the requirements of the Texas Open Records Act. Open Records Decision 497 (1988). Hence, this request is so treated. As the requestor acknowledges that the subject information is confidential, we first turn to the Board's claim of a special right of access.

The requestor claims a statutory authority to obtain the requested information, under Government Code sections 411.90 and 411.087. He asserts that the Texas Attorney General has consistently required law enforcement agencies to "provide such information when requested by the State Board of Education," citing Open Record Letter Nos. 97-0231 (1997), OR96-2396 (1996) and OR 96-1924 (1996) as support.

In pertinent part, Government Code section 411.90 reads as follows (emphasis added)

(a) The State Board for Educator Certification is entitled to obtain from the department any **criminal history record information** maintained by the department about a person who has applied to the board for a certificate under Subchapter B, Chapter 21, Education Code.

Section 411.087 makes this right of access to "criminal history record information" applicable to "any other criminal justice agency in this state." The department is such an agency.

The terms used in the subchapter of the Government Code containing sections 411.087 and 411.90 are defined by section 411.082 of that code, which provides in relevant part:

(2) "Criminal history record information" means information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.

These statutes provide the Board with a right to access to "criminal history record information" held by law enforcement agencies in this state. The department must therefore release such records to the requestor. However, rather than a compilation of arrests, detentions, informations and other formal criminal charges, the submitted information is an investigation file. Although this file contains "criminal history record information" as that term is defined by pertinent statute, we conclude that the Board has no special right of access to the file in its entirety. You must release information from the requested file that shows the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions. All other information in this file that is subject to exception may be withheld.

While an informal letter ruling must be held to the facts of its respective request, in any event, we note that the letter rulings cited by the Board do not support its claim of a special right of access to the information at issue in this request. In Open Record Letter No. 97-0231 (1997) the governmental body seeking an opinion characterized the information sought as "criminal history record information" and urged grounds based on common-law privacy. The representation was taken on its face and the exception found inapplicable. In Open Records Letter No. 96-2396 (1996), we noted that the information there at issue "consists of identifiable descriptions and notations of arrests, detentions, indictments, informations and other formal charges and their dispositions." As the information sought was within the statutory definition, it was ordered released. In Open Record Letter No. 96-1924 (1996), no special right of access issues were addressed.

Having concluded that the Board has no special right of access to the information the department seeks to withhold, we now turn to the exceptions from disclosure urged by the department. Information is excepted from the disclosure requirement by section 552.101 if it is considered to be confidential by statute. Section 261.201 of the Family Code reads in pertinent part:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

We are of the opinion that all of the submitted information consists of reports, and working papers used or developed in an investigation made under chapter 261 of the Family Code and is therefore confidential by statute. You have represented that the department has adopted no rules with regard to the release of this type of information; these records are therefore presumed confidential. *See* Open Records Decision No. 440 at 2 (1986).

In conclusion, with the exception of information as to the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions, the requested information must be withheld.

Since we are able to resolve this request by application of the above rationale, your other arguments are not addressed. We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Michael J. Burns
Assistant Attorney General
Open Records Division

MJB/ch

Ref: ID# 119807

Enclosures: Submitted documents

cc: Mr. Jack Stamps
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(w/o enclosures)